

REMARKS

The Examiner's remarks have been received and carefully considered. Reconsideration of the subject species election is requested for those reasons set forth in detail below. Applicant provisionally elects Species I (claims 1-34 and 68-76).

The Examiner entered an eight-way election of species requirement, set forth below.

SPECIES/CLAIMS

Species I – claims 1-34 and 68-76;
Species II – claims 35-44;
Species III – claims 45-46;
Species IV – claims 47-48;
Species V – claims 49-57;
Species VI – claims 58-65;
Species VII – claim 66; and
Species VIII – claim 67.

The Examiner indicates that claims 1 and 7-10 are generic to all species.

The Examiner takes the position that the present national stage application contains claims to different categories of invention which do not have unity of invention. More specifically, the Examiner has required restriction between Applicant's product and process claims. Applicant elects the method claims 1-75 for prosecution of the present application, and notes that the subject matter of apparatus claim 76 will be amended during prosecution to require the limitations of the elected method claims.

Applicant asserts that the election/restriction requirements entered by the Examiner are not well taken and should be withdrawn. The Commissioner has established two criteria for a proper requirement for restriction between patentably distinct inventions, as set forth in § 803 of the MPEP.

1. The inventions must be independent or distinct as claimed; and
2. There must be a serious burden on the Examiner if restriction is not required. The Examiner must provide reasons and/or examples to support his/her conclusion. Where plural

inventions are capable of being viewed as related in two ways, both applicable criteria for distinctiveness must be demonstrated to support a restriction requirement.

Initially, it is important to note that the Examiner's requirement for restriction is purely a discretionary matter, which is in no way mandated by statute. As the Commissioner himself suggests, this discretion should be exercised in a manner which results in the fair and efficient examination of the claimed subject matter. By requiring the Applicant to file multiple patent applications on claimed subject matter that can be easily and most efficiently examined at one time by a single Examiner results in unnecessary effort, and unfair costs associated with extra filing, issue, and maintenance fees. In view of the currently high fee schedules established by the U.S. Patent Office, these factors should be of utmost concern in the Examiner's exercise of the Commissioner's discretion in this area.

In the present case, the eight-way species election entered by the Examiner is deemed excessive, since there is no apparent serious burden on the Examiner if the restriction is not required. A thorough and complete examination of the claims in any one of the subject species would necessarily include the subject matter of the remaining species, such that examination of all species of the elected claims at the same time is appropriate. Furthermore, Applicant asserts that generic claims 1 and 7-10 noted by the Examiner are allowable, such that a stated election is not necessary.

Favorable action on the merits of the application is earnestly solicited.
Respectfully submitted,

PRICE, HENEVELD, COOPER,
DEWITT & LITTON, LLP

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Date

/Carl S. Clark/
Carl S. Clark, Reg. No. 28 288
695 Kenmoor, S.E.
P.O. Box 2567
Grand Rapids, Michigan 49501-2567
Tel: 616.949.9610
Fax: 616.957.8196
cclark@priceheneveld.com